

# COUDERT BROTHERS

ATTORNEYS AT LAW

1627 I STREET, N.W.  
WASHINGTON, D.C. 20006  
TEL: 202 775-5100 FAX: 202 775-1168

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SEP 17 1999

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OFFICE OF THE SECRETARY

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September 17, 1999

Ms. Irene Flannery  
Chief, Accounting Policy Division  
Common Carrier Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Subject: Renewal of Extension/Waiver Request  
47 CFR Section 54.507(b)(2)

Reference: State of Tennessee Application No. 18132:  
CC Docket Nos. 96-45 & 97-21

Dear Ms. Flannery:

Pursuant to your request in our conversation of yesterday, September 16, 1999, this letter is to renew the requests of the State of Tennessee ("Tennessee" or "State") of August 6 and 16, 1999 (see attached confirmation letters) that the Bureau allow the State a period of 90 days after the release of Universal Service Fund ("USF") funding to the State by the Bureau's Schools & Libraries Division ("SLD") for the State to use this funding.

As you are aware, in an Order released on August 11, 1999 ("Order")(FCC 99-216) in the above-referenced docket, the Commission approved, in major part, the State's Application for USF funding and directed the Bureau to work with the SLD to implement this approval, including insuring the prompt release of a Funding Commitment Letter. The SLD Funding Commitment Letter, authorizing the State to receive these funds, while not late, has yet to be received. Thus, effective September 20, 1999, funding has not yet been made available to the State.

In recognition of this schedule, combined with a recognition that the Commission's Tenth Order on Reconsideration in CC Docket No. 96-45 ("Tenth Order")(FCC 96-46, released April 2, 1999) might require the use of all USF Year 1998-1999 funding for non-

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recurring services by September 30, 1999 (Tenth Order at paragraph 25), the Commission authorized the Bureau to "waive any rules if, and, to the extent necessary, to effectuate our decision" (Order at paragraph 49), including extending the September 30, 1999 date until 90 days after the funds actually are made available. This 90-day period was the foundation for the establishment of the September 30, 1999 'deadline'. All other USF recipients, to the State's knowledge, have been allowed this period to use their nonrecurring funds.

Without an extension, the Commission's Order, and authorization of USF funding for Tennessee Schools, may be moot, since funding would not be made available until after it was denied!

An immediate grant of this extension/waiver request is required. The September "deadline" is only 10 days away. Further, the Bureau has been directed in the Order "to ensure the decision is implemented expeditiously" (Order at paragraph 48), including insuring that the implementation is "within 10 days" of September 13, 1999 (Order at paragraph 48).

The grant of the State's requests would be in the public interest by insuring that the Commission's Order is implemented as intended, and that the children of Tennessee have Internet access expeditiously, as they require. They already have been denied access too long! No public notice or comment period, or Commission action, is required for the Bureau to implement this request, and to waive any rule, as this authority was included by the Commission in its Order. Also, any such notice, or action, period would only frustrate the specific and "clear" intent of the Order for immediate implementation (Order at paragraph 48).

Accordingly, the State herein renews its request for a period of 90 days from the receipt of a funding commitment letter to use the non-recurring services funded, as required by the Commission's Order.

Respectfully submitted,

*William K. Coulter*

William K. Coulter

WKC:clz

cc: Lawrence Strickling, Chief  
Lisa Zaina, Acting Deputy Bureau Chief  
Robert C. Atkinson, Deputy Bureau Chief  
Sonja Rifken, General Counsel  
Dorothy Attwood, Legal Advisor to the Chairman  
Chairman William Kennard  
Governor Donald Sundquist  
Senator Howard H. Baker

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STAMP AND RETURN

August 6, 1999

RECEIVED

AUG 6 1999

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W. TW-A325  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: *Ex Parte* Submission, CC Dockets No. 96-45 and 97-21;  
USAC Application No. 18132

Dear Ms. Roman Salas:

This letter is to advise you that on August 5-6, 1999, the undersigned, along with Ms. Jacqueline Shrago, Department of Education for the State of Tennessee, spoke with Sonja Rifken of the Common Carrier Bureau ("Bureau") of the Federal Communications Commission ("Commission") in a telephone conversation regarding the following matters:

1. **Waiver Request:** the State of Tennessee requested that the Commission, in any forthcoming decision on the above-referenced matter, include a recognition that delays in approving Universal Service Funds ("USF") for the State of Tennessee will result in a collateral need for the Commission to extend the time for the use of those funds for non-recurring services from September 30, 1999 until 90 days after the funds are made available as a result of the Commission's *Tenth Order on Reconsideration* in this proceeding, FCC 96-45 (rel. April 2, 1999).
2. **ConnecTen Cost Assignments:** the State of Tennessee noted that any segregation of USF funding for services associated with ConnecTen must recognize that, as a result of State Procurement Law in Tennessee, costs and payments associated with ConnecTen have been allocated over a period of five (5) years; therefore, only a limited portion is set forth in the State's current Application for USF Funding Year 1. The remainder of

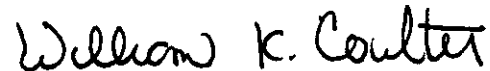
COUDERT BROTHERS

these costs, as they may be included for "matching" USF funding purposes, is to be included in later-year USF Applications.

Pursuant to Section 1.1206 of Commission's Rules, an original and a copy of this letter have been submitted to your office for inclusion in the public record.

Should you have any questions concerning this letter, please contact the undersigned at (202) 736-1811.

Sincerely,

A handwritten signature in black ink that reads "William K. Coulter". The script is cursive and fluid, with the first name "William" and last name "Coulter" clearly legible.

William K. Coulter  
Counsel to the Department of  
Education for the State of Tennessee

cc: Sonja Rifken

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August 16, 1999

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W. TW-A325  
Washington, D.C. 20554

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AUG 16 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: *Ex Parte* Submission, CC Dockets No. 96-45 and 97-21;  
USAC Application No. 18132

Dear Ms. Roman Salas:

This letter is to advise you that on August 12, 1999, the undersigned, along with Ms. Jacqueline Shrago, Director of Internet Services for the Department of Education for the State of Tennessee, met with Irene Flannery, Chief of the Accounting Policy Division of the Common Carrier Bureau ("Bureau"), and Ellen Wolfhegen, General Counsel of the Schools and Libraries Division ("SLD") of the Federal Communications Commission ("Commission"), to discuss the above-referenced dockets.

Pursuant to Section 1.1206 of Commission's Rules, an original and a copy of this letter, along with copies of three (3) documents presented to, and discussed with, the staff of the Bureau and the SLD, have been submitted for inclusion in the public record.

Should you have any questions concerning this letter, please contact the undersigned at (202) 736-1811.

Sincerely,

*William K. Coulter*

William K. Coulter  
Counsel to the Department of  
Education for the State of Tennessee

cc: Irene Flannery  
Ellen Wolfhegen

## ATTACHMENT A

The question has been raised as to the manner that the ConnectTen transaction is reflected in the State's Application. The following is a brief explanation for the purposes of setting this matter in context. This explanation is submitted for review by, and discussion with, the Administrator.

1. ENA paid \$7.500 Million to the State of Tennessee for ConnectTen (software). Under the terms of the contract, this amount was paid by ENA to the State within 3 months of execution of the ENA/State Internet Contract.
2. Since Tennessee State Procurement Law requires that "Services cannot be invoiced or paid-for until those Services are received", ENA did not (and could not) invoice the State to recover the cost for this asset in Funding Year 1, except as used in connection with its Service for FY 1. Thus, ENA invoiced the State for \$1.747 Million as a "one-time" charge for the "initiation of its Services." This is reflected in Line 1 of the State's Application for Year 1 funding. As noted above, by State Procurement Law, this was the amount that the State could pay because it was equal to or less than that charged by other Internet Service Providers for the initiation of identical services. This charge can be considered as directly connected to the use of ConnectTen software and to the ConnectTen transaction.
3. Since Tennessee State Procurement Law again requires that "Services can not be invoiced and paid-for until received", the remaining costs connected to the use of this asset will be invoiced to and paid for by the State over its depreciated "life" time (i.e., ENA has depreciated this asset over a standard 5 year depreciation period.). This depreciation is included as a component of the "recurring" service in the amount of \$95,833 per month. The charge is reflected in Line 2 of the State's Application (i.e., \$7.500M minus \$1.747M equals \$5.753M remaining divided by 60 months equals \$95,833 per month.). Line 2 sets forth a charge of \$329,000; \$95,833 of this Line amounts to a service charge that can be connected to the use of the ConnectTen asset.
4. Thus, Line 1 (\$1.747M) plus a minority percentage of Line 2 (\$95,833 mo. or, alternately \$1,150,596 yr. in Funding Year 1) would allow for the exclusion of ConnectTen charges in the State's Application for USF Funding Year 1.
5. Due to Schools and Libraries Division requested changes in the State's Application for USF Funding Year 2 Funding, the recurring \$95,833 monthly charge would be in Line 10.

The State's Application is for Internet Services, rather than equipment, and no distinct Line Item in its Application can be considered equipment specific.

## **ATTACHMENT B**



|   |                                       |  |   |  |   |  |
|---|---------------------------------------|--|---|--|---|--|
| <b>State of Tennessee:</b>                                  | <b>Application Number 00018132</b>    |  |   |  |   |  |
| <b>Service Provider:</b>                                    | <b>Education Networks of America</b>  |  | <b>SPIN: 143008159</b>                    |  |   |  |
|   |                                       |  |   |  |   |  |
| <b>Funding Notification vs. Form 471, filed April, 1998</b> |                                       |  |   |  |   |  |
| <b>January 1, 1998 - June 30, 1999</b>                      |                                       |  |   |  |   |  |
|   |                                       |  |   |  |   |  |
|   |                                       |  |   |  |   | <b>SLD Funding Notification</b>                |
| <b>Funding Notification</b>                                 | <b>Form 471 Item 15 Column Number</b> |  |   |  |   | <b>Synopsis</b>                                |
|   | <b>Column (7)</b>                     | <b>Column (8)</b>                          | <b>Column (9)</b>                         | <b>Column (10)</b>                             | <b>Column (10 extended)</b>                               |  |
| <b>Funding Request #</b>                                    | <b>Service Start Date</b>             | <b>Estimated One Time Prediscount Cost</b> | <b>Estimated Monthly Prediscount Cost</b> | <b>Estimated Total Annual Prediscount Cost</b> | <b>Estimated Total Annual Prediscount Cost (18 mnths)</b> | <b>Estimated Total Annual Prediscount Cost</b> |
|   |                                       |  |   |  |   |  |
| 00030708  | 7/1/98                                | 1,747,000                                  | -   | 1,747,000                                      | 1,747,000   | 1,747,000                                      |
| 00030710  | 7/1/98                                | -  | 329,276                                   | 1,975,656                                      | 3,951,312   | 3,951,312                                      |
| 00030713  | 7/1/98                                | -  | 275,770                                   | 1,654,620                                      | 3,309,240   | 3,309,240                                      |
| 00030714  | 7/1/98                                | 1,845,546                                  | 189,552                                   | 2,982,858                                      | 4,120,170   | 2,982,858                                      |
| 00030716  | 7/15/98                               | 1,790,552                                  | 146,302                                   | 2,595,213                                      | 3,473,024   | 2,595,213                                      |
| 00031803  | 8/1/98                                | 1,691,151                                  | 173,742                                   | 2,559,863                                      | 3,602,315   | 2,559,861                                      |
| 00030717  | 9/1/98                                | 1,207,140                                  | 172,675                                   | 1,897,839                                      | 2,933,889   | 1,897,839                                      |
| 00030720  | 10/1/98                               | 1,207,140                                  | 241,752                                   | 1,932,396                                      | 3,382,908   | 1,932,396                                      |
| 00030721  | 11/1/98                               | 1,134,489                                  | 363,953                                   | 1,862,395                                      | 4,046,113   | 1,862,395                                      |
| 00030722  | 12/1/98                               | 858,234                                    | 633,433                                   | 1,491,667                                      | 5,292,265   | 1,491,667                                      |
|   |                                       |  |   |  |   |  |
| <b>Totals</b>   |                                       | <b>11,481,252</b>                          | <b>2,526,455</b>                          | <b>20,699,507</b>                              | <b>35,858,236</b>   | <b>24,329,781</b>                              |

## **ATTACHMENT C**

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August 6, 1999

Page 2

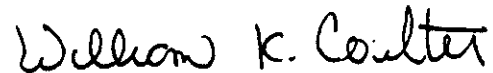
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Counsel to the Department of  
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cc: Sonja Rifken